**THE HON'BLE SRI JUSTICE B. PRAKASH RAO**

**AND**

**THE HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

**WRIT PETITION No.26342 of 2003**

**DATE: 20.08.2007.**

Between:
Smt. Razia Begum W/o.Shareef Ahmed, Aged about 45 years,
Occ:Household, R/o.H.No.9-2-11/A, Langar House,
Hyderabad, A.P., and others

..Petitioners.

AND

The State of A.P. rep. by
The Mandal Revenue Officer, Golconda,
Hyderabad District, Hyderabad and others

…Respondents.

**THE HON'BLE SRI JUSTICE B. PRAKASH RAO**

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**ORDER:** *(Per Hon'ble Sri Justice B. Prakash Rao)*

The petitioners herein who have been respondent Nos.8, 15 to 20 and 22 to 26 and who have been declared as land grabbers as per the orders, dated 12.11.2003, in L.G.C.No.154 of 1998, on the file of the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act'), filed this petition assailing the said orders by way of Writ of Certiorari. Respondent No.1 herein, who is the State of Andhra Pradesh, filed the application under Section 8 (1) of the said Act to declare them as land grabbers along with other respondents therein, who have been added as respondent Nos.5 to 19 herein, in respect of the property consisting an extent of 1457.91 Sq.Mts., situated in Survey No.171 part, correlated to T.S.No.33, Block 'A',

Ward No.18 of Golconda Mandal.

The case as sought to be made out by respondent No.1 goes to the effect that as per the Town Survey, the said land is recorded as a Government land and it is classified as Cheruvu Shikam (Tank bed) and having noticed the illegal structures raised by the petitioners and other respondents who have grabbed the land without any right, title and interest, they are entitled to be evicted. It was also pointed out that the said land had already been declared as Government land in the other proceedings in L.G.A.No.21 of 1997, by the appellate Court i.e. Special Court under the said Act, arising out of the proceedings in O.P.No.284 of 1990, dated 12.03.1997, on the file of the Special Tribunal. Though this application was initially filed against fourteen respondents, subsequently, thirteen more respondents, got impleaded by filing separate applications, some of them are the petitioners herein. Further, some amongst them filed a memo through their counsel stating that they have no interest in the land. It does not necessitate to delve into the case as set-forth on behalf of other respondents, therefore, we restrict their claim as made by the petitioners herein. It was contested by them to the effect that they

had been in possession and enjoyment in their own right by virtue of a registered gift deed, dated 08.06.1981 and they have been paying municipal tax, apart from having electricity and water connections. It was also stated that even for the notice issued under A.P.Encroachment Act they had given their due reply. According to them, since they are not parties to L.G.A.No.21 of 1997, the said proceedings are not binding and alternatively, it was also claimed by the petitioners that they undertook to pay the reasonable value of the land to the extent of possession and enjoyment at the prevailing market value.

With these and other allegations as contained, the Special Court framed the issues, namely,

1. *Whether the applicant is the owner of the application schedule property?*
2. *Whether the rival title set up by respondents is true, valid and binding?*
3. *Whether the respondents 5 and 6 prescribed title by adverse possession?*
4. *In case of success of the applicant in L.G.C., the respondents plea that they are willing to pay compensation in lieu of eviction is permissible as per law?*
5. *Whether the respondents are land grabbers within the meaning of Act XII of 1982?*
6. *Whether the applicant, in case of its success in*

*the L.G.C., is entitled to compensation as prayed for?*

7. *To what relief?*

Subsequently, the parties went into trial. On behalf of respondent No.1, the Mandal Revenue Officer was examined as P.W.1 and a Surveyor as P.W.2 and they marked Exs.A.1 to A.5. In rebuttal, on behalf of respondents before Special Court, R.Ws.1 to 10 were examined and Exs.B.1 to B.97 were marked. On appraisal thereof and taking into consideration the evidence adduced on behalf of both sides, the Special Court found that respondent No.1 has established that it is the owner of the petition schedule property. Except in regard to the other respondents therein, namely, respondent Nos.5, 6, 13 and 14, who are not before this Court and who have been held to have perfected their title by adverse possession, it was held that the other respondents, the petitioners herein, are the land grabbers and hence liable for eviction. Hence, this Writ Petition.

Assailing the said findings, the case as set-forth on behalf of the petitioners and as contended by the learned counsel appearing for the petitioners is that there is a clear discrimination

in the very approach made by the Special Court. When some of the respondents have been declared to have perfected their title by adverse possession, no similar approach was made in regard to the petitioners who also established their possession, which is more than the statutory period. Further, the petitioners on their own title are the absolute owners and the question of declaring them as land grabbers does not arise. Repelling the said contention it was stated that having regard to the total absence of any cogent material in their support, the petitioners cannot make any grievance as such and their case totally stands different from that of the others.

Considering the detailed submissions made across the Bar from both sides, and on a perusal of material, the only question that arises for consideration is as to in the facts and circumstances, the petitioners can be declared as land grabbers.

As stated above, the entire case as against the petitioners at the instance of respondent No.1 rested on a categorical finding that it was the Government land and it was a Cheruvu Shikam. Apart from examining P.Ws.1 and 2, reliance was placed by respondent No.1 on Ex.A.1, a pahani and Ex.A.2, a

District Gazette, apart from Ex.A.3, which is a extract of TSLR. These documents would show that the land was recorded as Government land, known as Cheruvu Shikam. Further, reliance was also placed on Ex.A.5, a copy of the judgment in L.G.A.No.21 of 1997, where the very same land was declared to be a Government land. Having regard to the same and especially there being no such serious rebuttal by way of any other acceptable document, as rightly held by the Special Court, it can safely be held that the said finding does not warrant any interference by this Court nor can be said to be in any way perverse.

Now the case as set-forth on behalf of the petitioners, on a consideration thereof including the evidence as put forth by them *vis-a-vis* the other material on record, it is seen except baldly stating that they are the owners, no proper documents are forthcoming to show either their own title or that of any of the predecessor in title. No such link has been established nor any trace has been made out to show a valid title. Further, even in regard to the possession, the same is not properly established for any such period to warrant attraction of the adversity or the prescription by title. All the documents relied on

by the petitioners fall far well within the prescribed period. Except the oral assertion, it remained totally unsubstantiated. The Special Court, on a consideration of the said evidence as available on record and the documents as produced by the petitioners themselves, did not find favour with them, and on a appreciation thereof, held that no such case has been made out to uphold the claim of adverse possession. Though such plea is purely that of law,

it emanates only after establishing the possession over statutory period and all other incidental aspects as evidenced by law. It is totally lacking. Further, even in regard to the possession, the finding of fact is against the petitioners and this Court in exercise of its powers under Article 226 of the Constitution of India cannot go or reappraise the same as held in **M/s. Shalivahana Builders Private Limited., Secunderabad V. Ganapathy Co-op. Housing Society**[1] and **M.Yadagiri Reddy v. V.C.Brahmanna**[2]**.**

In view of the aforesaid principles, and especially there being nothing on record to warrant interference, much less, any perversity in regard to the conclusions as arrived at by the Court below, we do not find any merits in the Writ Petition.

The Writ Petition is accordingly dismissed. No costs.

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**B. PRAKASH RAO, J**

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**G. BHAVANI PRASAD, J**

20th August 2007.
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[1] 2003 AIH 2291

[2] 2005 (1) ALD 1 (DB)